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NATIONAL ASSOCIATION OF THE DEAF

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April 1, 1996

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Closed Captioning and Video Description
CC Docket No. 95-176

Dear Mr. Caton:

Enclosed please find an original and four copies of the reply comments in the above captioned proceeding submitted by the National Association of the Deaf.

I would appreciate your referring all correspondence regarding this matter to my attention.

Sincerely,

Karen Peltz Strauss
Legal Counsel for
Telecommunications Policy

Enclosures

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Closed Captioning and Video)	CC Docket No. 95-176
Description of Video)	
Programming)	

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF THE DEAF**

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**REPLY COMMENTS OF
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I. Introduction

The National Association of the Deaf (NAD) respectfully submits these reply comments in the above-referenced Notice of Inquiry (NOI) on captioning and video description. The Commission's (FCC or Commission) NOI, requesting information about the availability, cost, and uses of closed captioning, drew responses from consumers and all segments of the video programming and distribution industries. These reply comments address many of the concerns raised by those parties and in particular urge the Commission not to grant any of the categorical exemptions requested to date.

II. Program Producers and Owners Should Have the Primary Responsibility for Captioning New Programs

Parties commenting to the NOI overwhelmingly agreed that the responsibility for captioning new programming that is produced or exhibited for the first time after the effective date of the Commission's captioning rules should rest with the producers and owners of such programming. See e.g. National Broadcasting Company, Inc. Comments (NBC) at 12; VITAC Comments at 13; Joint

Comments at 14; Home Box Office (HBO) Comments at 12; CBS Comments at 4, 21; Wireless Cable Association International, Inc. (WCA) at 4. The Commission itself has referred to the House Report to the Telecommunications Act of 1996 ("the Act") on this issue, which states that it is "more efficient and economical to caption programming at the time of production and to distribute it with captions than to have each delivery system or local broadcaster caption the program." NOI at para. 27, citing H. Rep. No. 204, 104th Cong., 1st Sess. 114 (1995); See also ABC Comments at 11; NBC Comments at 12.

The NAD agrees that program producers should be primarily responsible for captioning their programs and delivering their master tape with captions to all distributors. As noted by ABC, because the producer has ready access to the program's script on a computer data base, adding captions at the production stage will be less burdensome and expensive than doing so later in the distribution chain. Capital Cities/ABC, Inc. (ABC) Comments at 11. We also agree that it would be unnecessarily duplicative to require each service provider to re-caption identical programs, see e.g. Satellite Broadcasting and Communications Association (SBCA) Comments at 13; U.S. West Comments at 4; HBO Comments at 12), and that it will likely be easier to recover the costs of captioning programs at the production stage because these costs then can be spread among the purchasers of the captioned programs. See e.g. ABC Comments at 11; SBCA Comments at 12; Bell

Atlantic Comments at 7).¹ Moreover, the National Association of Broadcasters (NAB) asserts that many programs are not provided to local stations in advance of their airing (NAB Comments at 8). If captions are not already available on such programs, the only way of making these accessible to deaf and hard of hearing audiences is through live captioning, which is not as precise as off-line captioning. See National Captioning Institute (NCI) Comments at 3. With off-line captioning, a much higher rate of accuracy can be achieved because the captioners have the opportunity in advance to edit their work and provide the proper placement for the captions.

Perhaps most importantly, however, captioning at the production stage is preferred because it is most in accordance with the concept of universal design, a concept which this Commission as well as Congress - through passage of the Act - has sought to embrace. Universal design seeks to ensure that products and services are made accessible at their design stages, so that they can be used by the widest possible audience. The EEG Enterprises, Inc. (EEG) illustrates this point best in the following statement, wholly endorsed by the NAD:

The [c]losed [c]aptioning signal represents the visual depiction of the audio portion of the video program material and should be deemed to be an inherent part of the program. It should carry the same importance as the audio portion.

¹ WCA also notes that imposing the captioning requirements on producers would help prevent contractual problems between suppliers and distributors that prevent the distributors from adding captioning. WCA Comments at 5, n.10.

EEG Comments at 4 (emphasis added).

While the primary responsibility for providing captioning should be on the producer or owner of a given program, national and local stations must still bear responsibility for ensuring that they secure the captioned master, and that the program is aired with the captions intact.² Indeed, we urge the FCC to adopt a rule that makes it unlawful for video providers not to transmit captioned versions of programming. This rule should apply for both previously published programming (i.e. before the effective date of the Commission's rules) and all new programming.

Moreover, we do not believe that programming providers should be relieved of all legal responsibility for captioning their programs. Rather, we propose that the Commission make video program providers ultimately responsible for the provision of captioned programming. It will then be incumbent upon those providers to ensure that they receive and exhibit captioned masters of video programming and that they caption all video material which they produce themselves.³ Finally, we urge the

² This includes ensuring that the captioning for programs which have been edited by the local provider are reformatted for proper viewing. See NAD Comments at 21.

³ In this way, the Commission can enforce the captioning mandates at the provider or network level (i.e. if the Commission does not have sufficient authority to directly enforce the actions of producers). This is similar to the manner in which the Commission enforces its minimum standards of quality for telecommunications relay services (TRS). Specifically, under Title IV of the Americans with Disabilities Act (ADA), common carriers must provide TRS to their subscribers. 47 U.S.C. §225. However, in states that have received relay certification, common carriers

Commission, in establishing its procedures for reviewing consumer complaints, to make clear the method by which consumers can bring complaints for inadequate captions or captioning omissions - i.e. whether such complaints should be brought against the program producer, network affiliate, cable station, or other such entity.

III. Program Providers and Distributors Should Be Responsible for Captioning Previously Published Programming

The NAD also agrees with NBC that the provider or distributor of a program (e.g. the cable network, the national syndicator, etc.) should be primarily responsible for providing captioning for previously published programming. NBC Comments at 13. Toward this end, we agree that "if the initial exhibition of the program included captions, the program producer (or other owner of the captioned material) should take whatever steps are necessary to ensure that captioning material is made available" to the provider or distributor. Id.⁴ Again, because there may be varying levels of responsibility for ensuring the provision of

can discharge this obligation through the official state relay service provider. Although in these states, each common carrier need not individually provide relay services (which would result in duplication of services within the state), each remains individually responsible for ensuring that the relay services in those states meet the Commission's minimum standards of quality. 47 C.F.R. §64.604. Similarly, although here, individual stations would not each have to duplicate efforts to caption each show (i.e. the primary responsibility to do this once will have been shouldered by the program producer or owner), the local providers would be legally responsible for ensuring that their programs are, in fact, captioned.

⁴ According to NCI, some public domain programming does not seem to be owned by any known entities. NCI Comments at 4. Imposing the requirement to caption on the program provider or distributor will ensure that someone bears the responsibility to provide captions on these shows.

captions on previously published programming, we request that the FCC clarify the means of enforcing these requirements of the Act.

IV. The Commission Should not Grant any Categorical Exclusions from its Captioning Requirements

The NAD was offended by the number and breadth of requests for programming exemptions from the captioning requirements.⁵ Were the Commission to grant these requests, nearly every type of video programming would ultimately be exempt, wholly defeating the statutory mandate of the Telecommunications Act. The NAD unequivocally opposes any and all categorical exemptions as inconsistent with the Act, and again urges the Commission to develop timelines that will ultimately achieve 100 percent captioning of all video programming.⁶

To begin with, the NAD opposes exemptions for live

⁵ WCA also requests the Commission to grandfather in any wireless cable systems that use scrambling technology that does not pass line 21 of the vertical blanking interval. WCA Comments at 7. We oppose any such request as a violation of the requirements of the Television Decoder Circuitry Act and the Cable Act to ensure that captioning services are passed through cable to consumers.

⁶ The NAD also opposes the use of sign language interpreters as a substitute for captioning. Interpreters cannot begin to provide access for millions of senior citizens, hard of hearing individuals, persons learning English as a second language and others who need captions, but have no knowledge of sign language. Moreover, the interpreter "bubble" typically provided in a corner of the screen is small and makes following the program very difficult. See e.g. VITAC Comments at 14; League for the Hard of Hearing (LHH) Comments at 2; City of St. Louis (St Louis) Comments at 2. Similarly, NAB's suggestion that a substantial portion of the "hearing impaired" population can gain access to programming through other means, including adjusting the volume on their sets or using hearing aids (NAB Comments at 2), is simply incorrect and misconstrues the very basis for the captioning mandates - to provide access for individuals who would not have full access without captions.

programming (See e.g. National Cable Television Association, Inc. (NCTA) Comments at 23), premium cable stations (See e.g. HBO Comments at 15), previously published programming (See e.g. SBCA Comments at 9; HBO Comments at 14-15)⁷, and locally originated programming, including programming originating on public, education, and government access channels (See e.g. U.S. West Comments at 5-6). Reasons for these exemptions varied, though most were based on the generally imprecise and typically unsupported declaration that the programming budget of a particular station or industry (e.g. cable, public television, etc.) is insufficient to cover captioning services.

These program categories form the very core of video programming services and were clearly contemplated by Congress in its creation of the caption mandates. We again refer the Commission to the plain mandate of the Act to require full access to new programming and to require program providers and owners to maximize captioning on previously published programming. The Conference Report, similarly, is unequivocal in directing the FCC to "ensure that video services are accessible to hearing impaired ... individuals." Conf. Rep. No. 458, 104th Cong., 2d Sess. 182 (1996). The sweeping exemptions requested above fly in the face of such a direct Congressional mandate and would swiftly defeat

⁷ NCTA raises the concern that it would be impossible to caption all of the libraries of preexisting programming "on the chance they will be aired at some point in the future." NCTA Comments at 12. We propose that pre-existing programs be captioned only when they are aired or distributed for public viewing, not when they are simply sitting on the shelves.

the goal of providing access to video programming. We also offer the following points in response to other exemptions requested by parties to this proceeding:

A. Regional Sporting Events

Some of the parties commenting asserted that sports need not be captioned because much information on televised sports programs is visual, including the conventional scoreboard and background information provided in graphics. ABC Comments at 14; NBC Comments at 14. These comments fail to realize that the commentary provided by sports announcers assists tremendously in the understanding and full appreciation of sporting events. Not only is the play-by-play information critical to following the progress of a game (as compared to a very occasional shot of a scoreboard or a graphic display of the time left), but announcers frequently provide valuable information about players in the game (e.g. birthplace, strengths and weaknesses, etc.) about the teams (team records, offensive/defensive strategies, standings), as well as critical analyses of the game itself as it is played. In addition, discussions during time-outs or interviews with coaches, managers, and players between periods/quarters and after the game all contain informative material that remain unavailable to deaf and hard of hearing audiences when captioning is not provided.

Some parties to this proceeding claimed that there are logistical problems associated with captioning regional sporting events which involve multiple feeds at the same time. See e.g.

NBC Comments at 13-14. However, as noted by VITAC, the entire NCAA basketball coverage was captioned in 1995, including 100% of the NCAA Basketball Tournament, even though many of these games were simultaneously played and broadcast by CBS to various regions of the country. VITAC Comments at 4. Other captioning agencies similarly report that they have satellite and fiber optic capabilities that enable them to caption numerous programs at the same time. Because captioning of simultaneously produced regional sports coverage is technically feasible, and because full access to sporting events is of exceeding importance to individuals who are deaf and hard of hearing, the NAD strenuously objects to an exemption from captioning for regional and national sport telecasts.

B. The Weather Channel

The Weather Channel has requested an exemption from the captioning requirements because, it claims, its services are textual in nature, and therefore do not really need captions. Weather Channel Comments at 2-3. Although some of the information provided on this channel is, in fact, textual in nature, by and large such information is limited to weather conditions in the local area of viewers. There is a considerable amount of audio information (not duplicated in text) provided on this channel, with respect to weather conditions outside of these local areas. While pictorial information in the form of weather maps are provided, these maps are difficult, if not impossible to understand for the layperson if they are not accompanied by

explanations.⁸

The Weather Channel is frequently used by travellers in planning business trips, vacations, and other excursions. Without access to this information, travellers who are deaf or hard of hearing are unable to make the same informed decisions for their excursions as are hearing viewers. Insofar as this is one of the very basic purposes of having a Weather Channel, we oppose a categorical exemption from captioning for this channel.

C. Shopping Networks

It was also suggested that because shopping networks are textual, they should be exempt from the captioning requirements. NCTA Comments at 23.⁹ Again, we oppose an exemption for these networks. Typically, these networks provide commentaries about the features which characterize their products, as well as demonstrations of the products themselves. Deaf viewers report that access to the audio information on these channels is critical to making a decision on whether or not to purchase a given product.

D. Late Night Programming

A few of the parties commenting suggested an exemption for

⁸ One deaf viewer suggests that those seeking an exemption for this channel be requested to watch these programs with the sound off. In her words, "You can see the weather map and the nice graphics, but the spoken parts are what make them come together and give them meaning."

⁹ NCTA also requests an exemption for court programs on the basis that such shows are visual in nature. NCTA Comments at 23. Insofar as these programs are almost entirely made up of court trials and interviews with attorneys, it is difficult to comprehend the basis for this assertion.

late night programs, such as late night news feeds between the hours of 2:00 to 6:00 A.M. NAB Comments at 8-9; ABC Comments at 13. Like hearing viewers, there are many deaf or hard of hearing individuals who may choose to watch late night programming because they enjoy staying up late, have insomnia, or work graveyard shifts.¹⁰ Moreover, there appears to be an evolution toward 24 hour video news services. CNN already provides news programs around the clock, and recently introduced a 24 hour financial news show. In addition, CNN has plans to air a 24 hour sports channel in partnership with Sports Illustrated. Similarly, both ABC and NBC have plans to launch 24 hour news shows. We oppose a categorical exemption of what is clearly becoming a trend in programming - i.e. 24 hour news services. However, given the fact that captioning requirements are to be phased in, we do agree that the requirements for captioning very late night programming can be phased in at a later date than programming at earlier time slots.

E. Advertisements and Infomercials

Requests to exempt advertisements and infomercials (see e.g. U.S. West Comments at 5; NBC Comments at 13) are puzzling. As

¹⁰ Parties requesting an exemption from captioning these shows generally based their requests on the assertion that the audiences for these programs are low. However, the very fact that stations make the effort to broadcast these news programs at all signifies that they are reaching a definable segment of the viewing audience on a regular basis. It is difficult to comprehend their assumption that deaf and hard of hearing individuals are not at all a part of that audience.

noted by the comments submitted by the Association of Late Deafened Adults (ALDA), it is hard to comprehend why sponsors will incur thousands of dollars in expenses to air local advertisements and sometimes millions of dollars to exhibit national spots, and at the same time be unwilling to spend a tiny fraction of that amount to caption those materials. ALDA Comments at 5; see generally CaptionMax Comments. Indeed, it cannot be disputed that companies that purchase commercials on video programs can well afford to pay the low cost of captioning those commercials.

Commercial advertisements are useful for informing consumers about products and services which they currently use or may consider for purchase. For this reason, the NAD opposes excluding captioning requirements for advertisements or infomercials. However, the NAD does not oppose a requirement that places the responsibility for captioning these video materials on their producers.

F. Short Form Programming

The cable industry argues that there should be an exemption for short form programs, such as music videos, interstitial programming, and promotional materials. As the bases for these exemptions, they set forth a variety of reasons. Below, we respond to each of their assertions:

i. Music Videos

First, NCTA argues that short form programming, such as music videos, has a short shelf life, and therefore is not

economical to caption. NCTA Comments at 24. In fact, captioning agencies already caption music videos, which are routinely enjoyed by deaf and hard of hearing people.¹¹ It is incorrect to suggest that these videos have a short shelf life, as in fact, they are aired on multiple occasions on the music channels. In any event, the "shelf life" of a program is not a factor which either the Act or its legislative history permits the Commission to consider in granting exemptions from the captioning requirements.

ii. Interstitial Programming

Cable companies also complain that the tight schedule for producing short form programs makes captioning such programming somewhat difficult. We respond by stating that if cable companies can manage to provide the audio portion of such programming within a tight schedule, they can do the same with respect to the provision of closed captions. One ready solution is to hire in-house captioners, who can work with other programming directors and editors to ensure the inclusion of captions on all interstitial video programming.

The public television licensees also request an exemption for short form programming such as station breaks, news breaks, and underwriting credits. Joint Comments at 11. An exemption of this nature ignores the fact that deaf and hard of hearing

¹¹ Captioning music videos is by no means a formidable task. The lyrics to the music - available long before the artist enters the studio to begin taping - could easily be typed and encoded as necessary into the video.

viewers have a right to full access to video programming. 47 U.S.C. §713(b)(1). News breaks, for example, are intended to keep viewers fully informed about current events with up-to-the-minute and late breaking information. This is precisely the type of access to news and information which Congress contemplated making available through video programming in the Act. The provision of captioning on this and other short-form programming should be incorporated into the annual programming budgets for these public affiliates.

iii. Promotional Materials

NBC, in its request for an exemption for promotional materials, claims that information about the name of the upcoming program and the time of its broadcast is often displayed visually in the "promo." NBC Comments at 4; See generally HBO Comments at 15. Promotional materials, however, contain a great deal more than simply the time and name of the upcoming broadcast. Information about the content and nature of the broadcast, and in certain instances its appropriateness for children, are provided in promotional materials. The suggestion that the deaf community should not be able to sample the content of upcoming programs is highly objectionable. This is the very information needed to make informed decisions about program viewing.

The NAD also questions whether, in fact, the time of the upcoming broadcast is routinely available in a visual format. In our experience this information is frequently absent. Moreover, because the sound track of promotional programming does not often

follow what is graphically displayed, understanding promotional materials through limited graphical cues can be exceedingly difficult.

V. Standards of Captioning Quality Are Essential

NAB requests the FCC to rely on the incentives of broadcasters to provide quality captioning rather than to adopt its own rules mandating quality and accuracy standards. NAB Comments at 12. Similarly, NBC explains that as a national commercial network, it must already meet certain requirements of quality and dependability. NBC Comments at 9. At the same time, NBC acknowledges that a "cottage industry" of captioning has developed throughout the nation and that "the quality and reliability of many of these smaller and newer operations, . . . is sometimes questionable." Id. Similarly, ABC notes that although local and smaller captioning services charge lower prices, the quality of the captions typically diminish with the price. For example, ABC notes that often freelance personnel perform live captioning from their homes without the necessary support staff and equipment to produce quality captions. ABC Comments at 10. Comments submitted by public broadcasting licensees also acknowledge that "[t]here is already a lot of substandard closed captioning programming;" they urge the Commission to try to improve captioning quality. Joint Comments at 8.

Our experience has also shown that the quality of captions varies considerably, and that there is little consistency in the

format and style of captions across video providers. In addition, experiences in Canada with mandated captioning fully illustrate the need for the Commission to promulgate standards of quality. In Canada, licensees of television stations are required to provide a certain amount of captioning each year. However the lack of standards for captioning quality and consistency have resulted in innumerable and ongoing consumer complaints.¹² See also VITAC Comments at 20; WGBH Comments at 21.

We agree with NCI and EEG Enterprises that the Commission needs to establish standards to clearly define acceptable captioning quality. NCI Comments at 7; EEG Comments at 4. As noted by EEG, without the establishment of such standards, the captioning mandates may result in entities securing caption services at the lowest prices, without regard to the effectiveness of those services. Id.¹³

VI. The Commission Should Mandate Real-Time Captioning for All Live Programming

In its initial comments to the NOI, the NAD emphasized the importance of providing real-time captioning for live programming

¹² Many of these complaints found their way to the National Center for Law and Deafness, a prior public service of Gallaudet University.

¹³ Although VITAC proposes a two tier approach for captioning standards - one for low cost captioners and another for full service captioning facilities - we are concerned that such an approach would lead to a substandard class of captioning, and ultimately relegate caption viewers to second class access to video programming. By analogy, program producers and providers would hardly consider two different audio standards.

(NAD Comments at 20). Other commenters agreed with the NAD on this point and in particular noted the value of real-time captioning over electronic newsroom captioning (ENR) for live news broadcasts. For example, CBS stated that "[r]eal-time captioning, created by stenocaptioners through verbatim transcription of the broadcast as it unfolds is . . . unquestionably preferable to ENR captioning" (CBS comments at 17, emphasis added) and that "verbatim real-time captions provide the most valuable service to our viewers" (CBS Comments at 13). CBS also acknowledged that the quality problems associated with ENR "reduce its value to deaf and hearing impaired¹⁴ viewers" in that pre-scripted captioning is "incomplete, with some portions of the program captioned somewhat inaccurately and others not captioned at all." CBS Comments at 17.

At the same time, CBS and a few others have raised concerns about whether or not the supply of skilled stenocaptioners is sufficient to handle the increased volume of live programs that need to be captioned. They argue that phasing-in the requirements for captioning will be necessary to achieve a greater utilization of real-time captioning services because the current availability of real-time captioning services are inadequate to caption all live local and network programming.¹⁵

¹⁴ It should be noted that the preferred terminology is "deaf and hard of hearing," in that the term "hearing impaired" connotes a medical illness or problem.

¹⁵ Some commenters in the cable industry also suggest that there are logistical difficulties related to live captioning outside a studio setting for live newscasts. This argument is

In its initial comments, the NAD acknowledged that a phase-in of the captioning requirements may be necessary, and proposed that full captioning mandates be in place within two years. Insofar as the parties who suggested deferring the deadlines for compliance did not themselves propose timelines for compliance, we adhere to our original proposal of two years after the effective date of the Commission's regulations.¹⁶

Other parties commenting noted that live newscasts are sometimes captioned with a combination of pre-scripted material and real-time captions. For example, NBC allows its stenocaptioners to download news scripts from the teleprompter prior to the broadcast and then uses real-time captioning during the actual live news program to (1) caption live materials such as interviews and (2) to adjust prescribed captions when live

unfounded. As noted in the initial NAD comments, all four major local networks in the D.C. Metropolitan area use real-time captioning for their entire newscasts, including live field reports. NAD Comments at 29.

¹⁶ Because the Commission is not required to promulgate regulations until August 8, 1997, this actually provides three and a half years for the continued development of high quality captioning agencies. Indeed, the passage of the Telecommunications Act of 1996 itself has likely spawned the creation of new captioning services to begin meeting the increased demand. Moreover, CBS notes that one solution to a lack of regionally available stenocaptioners already exist. CBS Comments at 20. Specifically, long distance captioning agencies can have two telephone lines - one for audio and one for video information - linking them to local stations producing live programming. The small cost entailed in adding a video link - according to CBS only \$50 per hour - enables the captioners to both hear and see the video programming as it is broadcast. Alternatively, if an audio link is used alone, errors can be minimized if the real-time captioner has the opportunity to review pre-scripted materials prior to their use in the live programming. This method is used by at least one national captioning agency.

dialogue changes the script. NBC Comments at 2-3. VITAC claims that the quality of captioning news shows increases then the captioner uses pre-scripted material and cleans up that material during the program's airing. VITAC Comments at 10. We do not oppose the use of pre-scripted material in conjunction with real-time captioning for live news programs so long as guidelines are set forth which require producers/providers of such live programs to (1) use real-time captioning for all non-scripted material, including, but not limited to, live interviews, field reports, breaking stories and anchor banter, (2) delete all extraneous text, such as camera and anchor cues from the pre-scripted material coming over the teleprompter, and (3) correct all errors in the pre-scripted material, including abbreviations that would not be understood by the viewing public.¹⁷

ABC has stated that its live captioners are expected to meet a 98.6% accuracy rate, which, it reports, is the standard set by the National Shorthand Reporters Association. ABC Comments at 10. Similarly, NCI requires a 98.5% accuracy rate for real-time captioning at 225 words per minute. NCI Comments at Appendix B.¹⁸ According to the WGBH Educational Foundation (WGBH), even

¹⁷ It should be noted that switching between real-time and prescripted captioning throughout a program may require additional time and labor because it will be necessary for the captioner to conduct an initial review and edit of the pre-scripted materials, and will require a coordinator to orchestrate the proper use of the real-time and ENR captioning during the program.

¹⁸ CBS comes close to these rates, with a policy that requires verbatim real-time captions to have error rates of no more than 2%. CBS Comments at 13.

accuracy rates of 99% can result in more than two mistakes per minute (WGBH Comments at 32). We agree that it is critical for real-time captioners to have the training and skills necessary to accurately caption live programming without frequent errors. As noted by VITAC, the caption viewer does not have the opportunity to look back over previously captioned words to figure out their meaning when mistakes in captioning are made. VITAC Comments at 19. Accordingly, we urge the FCC to adopt the 98.6% accuracy standard already in place by ABC and the National Shorthand Reporters Association.

VII. Funding Solutions Are Available to Handle Captioning Costs

A number of parties raised concerns about their inability to fund closed captions. What these parties do not realize is that captioning services need to be considered a mandatory part of a producer/distributor's overall production/distribution operating budget, in the same way that video and audio costs are currently incorporated into those budgets.¹⁹ Indeed, as noted by CaptionMax, after the captioning requirements are put into place, everyone will be subject to the same obligation to incorporate these costs, eliminating any competitive advantage that would exist were the requirements only imposed on selected entities.

One means of reducing costs may be for providers to purchase

¹⁹ See e.g., ALDA Comments at 6. WGBH-TV notes that in 1982, it began a policy of routinely including captioning as a "mandatory line item in all its national production budgets." WGBH Comments at 23. If the financially strapped public broadcasting stations are able to incorporate such costs into their budgets, certainly it is feasible for commercial and cable networks to do the same.

their own equipment and software to fulfill their captioning requirements. For example, HBO, which provides among the highest percentages of captioned programming, already has established its own in-house captioning services for off-line captioning. Similarly, comments submitted by the City of St. Louis explain that Hillsborough County, Florida was able to dramatically increase the number of captioned hours for its public meetings after purchasing its own equipment and software. Comments of St. Louis at 3-4.

The licensees of public broadcasting facilities, in their comments, have suggested that the Telecommunications Development Fund created by Section 714 of the Act should be used, in part, to fund closed captioning of programming which they produce. Joint Comments at 13-14. Other parties as well suggested the establishment of a fund by a governmental agency, which would review program descriptions and depending on a number of factors, including the economic resources available to the provider, distribute full or partial funding for closed captioning and video description of such programs. See e.g. F and V Channel L.L.C. Comments at 7.

Although we strongly believe that funding for captions should not be treated as a special and "add-on" category for program producers and providers, we do realize that there will be situations, such as in the case of public broadcast programming, where the Commission may determine that captioning costs will result in an undue burden under the Act's criteria. We support

the use of either the Telecommunications Development Fund or the creation of a similar fund to provide funding for the limited situations in which undue burden has been proven.

VIII. Market Forces Alone are Insufficient to Achieve Full Access to Video Programming

Various cable providers submitted comments to the Commission which urge the Commission to rely on market forces and voluntary efforts to ensure the provision of captioning. See e.g. A&E Television Networks (A&E) Comments at 1. For example, A&E argues that market pressures will move program distributors toward "full accessibility" and points to (1) grants from the Department of Education and (2) the Television Decoder Act's requirement for televisions to be equipped with decoder chips as sufficient incentives to provide more captioning.²⁰ Clearly, however, such incentives have not worked for cable stations such as A&E. As noted in our original comments, to the best of our knowledge, in November of 1995 the A&E Channel exhibited only 9.75% of its programs with captions in the New York City region. NAD Comments at Attachment C. Indeed, in its own submission to the FCC, A&E lists all of the programs (some of which were one-time or mini-specials) for which it provided captions since 1990 in only half a page of text, this notwithstanding the fact that A&E admits that it is providing an increasing amount of original

²⁰ A&E Comments at 7, 10, 13. The legal analysis employed by A&E to defend its position is inappropriate at best. Its comments frequently cite to Commission proceedings, Congressional findings, and judicial decisions that are as many as two decades old, and apply legal principles which have been superseded by the mandates of the Telecommunications Act of 1996.